Supreme Court, U.S.
FILED

091181 MAR 25 2010

OFFICE OF THE CLERK

No. _____

In The
SUPREME COURT OF THE UNITED STATES

RICHARD JOHN FLORANCE, JR., et al.,
de facto Defendant (state/federal) –
Appellant – Petitioner,

v.

UNITED STATES OF AMERICA, et al.,
de facto Plaintiffs (state/federal) –
Appellees – Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ORIGINAL PETITION FOR A WRIT OF CERTIORARI

WITH APPENDIX A

RICHARD JOHN FLORANCE, JR.
1908 VASSAR DRIVE
RICHARDSON, TEXAS, 75081

Questions Presented

Compelled Consent

1. May the appellate court compel RJF to consent to non-judicial decision-making?

Sanctions

2. May the appellate court restrict RJF's access?

From the appeal proper

Removal – Jurisdiction

3. Does the trial court have Removal jurisdiction?

   a. Where's the federal question?
   b. Who's the *de facto* defendant?

Removal – Procedure

4. What did doj actually Remove, if anything?

5. Where's the evidence of signature authority?

Dismissal – Immunity

6. Are these entities immune from this suit?

Dismissal – Anti-Injunction Act

7. Where's the evidence that RJF is a "taxpayer"?

Notice of Orders

8. Does an ECF Notice suffice for Notice of an order to a non-ECF party?

Temporary Injunction

9. Is RJF entitled to a temporary injunction enforcing the automatic administrative stay?

Parties

Appellant(s)

Richard John Florance, Jr., and
RICHARD JOHN FLORANCE, JR. ("RJF")
de facto Defendant, state and federal

Appellee(s)

UNITED STATES OF AMERICA ("USOA")

UNITED STATES ("U.S.")

de facto Plaintiffs, state and federal

Petition for a Writ of Certiorari

RJF petitions for a writ of certiorari to the federal appellate court as follows:

Citations to decisions below

None.

Jurisdiction

(i) Date of Dismissal
2 March 2010 [+90: 31 May 2010].
No. 10-10057

(ii) Extension N/A

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. §§ 1254(1), 2101(c).

(v) Statutory challenge, Rule 29.4(b)
None.

Non-Argument Calendar Preferred

Oral argument is not expected to aid in the resolution of these issues.

Statement of the Case

Trial Court's Removal Jurisdiction

None.

Alleged basis: § 1331, § 1340. RJF's well-pled challenge to irs' 90-day letter sounds in trust law.

Compelled Consent

In general.

RJF has objected to non-judicial decision-making for years. This case is no exception. RJF objected to

non-judicial decision-making in the *appellate* court starting with his Notice of Appeal. His Brief reinforces the objection. Steadfast in their defiance to the end, "the fifth" had a clerk "sign" both "orders".

RJF's Motion to Strike.

Ignored; hence, denied.

Sanctions

The beginning.

The denial of access issue dates back to Florance's first "tax court" case(s). "The fifth" set successive *national* sanctions records for "tax court" cases by sanctioning the **"taxpayer" means "fiduciary"** litigants, first *TELLO* ("shop worn"), then *Stearman*. They sanctioned Wallis without setting a new record. Instead of penalizing Florance monetarily, "the fifth" "merely" restricted his access. No. 07-60552. However, "the fifth" have perpetuated their oath-abrogating, lawless, *published* policy by sanctioning BRAQUET, COLLARD, and the TAYLORS.

The restriction from No. 07-40129 [1] arises from the Florances' pointing out very clearly the crimes committed by SCHELL, et al., arising from compelled consent to non-judicial decision-making.

This case.

"The fifth's" clerk "ordered" Florance to ask within 30 days for permission to proceed on appeal. Seeing no order, RJF submitted early his Brief and Record Excerpts [2] to mitigate "the fifth's" damages.

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[1] That case was decided in June, 2007. It was Oct., 2007, before RJF knew that a ruling even existed, and it was Jan , 2008, before the court sent RJF a copy of that order, on request.

[2] RJF made several inquiries to the trial court for the check-out copy of the Record. It was never made available.

By dismissing *this* appeal, "the fifth's" clerk expansively rewrites Removal policy and effectively compels RJF to be a fiduciary.

Waiver and/or estoppel.

"The fifth" waived their restriction and/or are estopped from asserting it. In No. 07-40130, "the fifth" not only *didn't* (A) demand a motion or (B) deny access but also *did* (C) grant relief. The Eastern District had used a clerical "notice of deficiency" as a Remand "order", which "the fifth" vacated.

About the appeal proper

First things first.

RJF expects the first step is curing "the fifth's" defiance regarding (A) compelling consent and (B) restricting RJF's access.

An overview.

The trial court's recitation is a right smart better than most prior ones. However, among the ***overt*** missteps, she (A) *asserts* RJF supplied no statutes showing waiver, (B) *omits* the authority RJF cited (Ex. D-101; Motion to Remand; its Reply; etc.), and (C) replaces *RJF's* focus question with *hers*. Thus, two perspectives arise. For now, RJF reads that entire recitation as doj's/"the fifth's" position.

In response to the "2006" 90-day letter, RJF filed in the state court his well-pled petition for declaratory judgment and permanent injunction.

That's what doj Removed, if anything.

After Removal, when the irs refused to resolve the "2004" matter administratively, RJF filed his supplemental petition with the same state court, requesting essentially the same relief as for "2006".

In the federal court, RJF moved to Remand and to strike the Notice of Removal for lack of signature.

DOJ moved to dismiss.

When the irs repeatedly refused to recognize the state court litigation for both "2006" and "2004", even after doj had Removed "2006", RJF requested a temporary injunction to enforce the automatic administrative stay. RJF included his supplemental petition ("2004") as an exhibit, along with the communiqués to and from the irs.

The trial court denied the injunction; however, the irs *has* stopped going any *farther* down that path. But, they have not reversed those unjustified steps, and there's still *nothing* formal that connects *state* court litigation with that automatic stay. Thus, per present federal judicial/clerical policy, the irs/doj conglomerate may *still* proceed administratively, i.e., *ignore* the stay, and wipe out the state court declaratory judgment petitioner who is right as rain. Such renders the entire "tax" system extortionate.

The only Notice RJF received of the federal trial court's ruling(s) were print outs of the ECF Notices. The trial court never served its order(s) on RJF.

RJF's well-pled complaint raises no federal claim. Neither diversity nor complete preemption applies. Moreover, USOA/U.S. are the *de facto* plaintiffs, rendering Removal facially impossible.

Since doj didn't replicate RJF's case style, there's a significant question as to what, if anything, doj Removed. Moreover, since there's no evidence of agency, the Notice of Removal is not "signed".

For USOA/U.S. to collect "tax" is for them to act

commercially; hence, they have no immunity.

The Anti-Injunction Act prevents "taxpayers" from obtaining equitable relief. Thus, doj begs the very question at the heart of this suit: where's the evidence that RJF is, in fact, a "taxpayer"?

Argument

Compelled Consent

1. May the appellate court compel RJF to consent to non-judicial decision-making?

Cf. Gonzalez v. United States, 128 S. Ct. 1765 (12 May 2008) ("**If the parties consent ....**").

Sanctions

2. May the appellate court restrict RJF's access?

Those sanctions have been illegal from their inception. "The fifth" never had evidence of anything justifying sanctions in *any* form.

Jones Nat'l Bank v. Yates, 240 U.S. 541 (1916) (is there substantial evidence to support the charge?); *Sinclair v. United States*, 279 U.S. 749, 761 (1929) (no material evidence to support charge); *Thompson v. Louisville*, 362 U.S. 199, 207 nn.12, 13 (1960) ("[It is] a violation of due process to convict and punish a man without evidence of his guilt."); *Garner v. Louisiana*, 368 U.S. 157 (1961) (Record so devoid of evidence as to render conviction a violation of Due Process); *Vachon v. New Hampshire*, 414 U.S. 478, 480 (1974) ("It is beyond question, of course, that a

conviction based on a record lacking any relevant evidence as to a crucial element of the offense charged ... violate[s] due process."); *Burks v. United States*, 437 U.S. 1 (1978) (reversal based on insufficiency of evidence activates Double Jeopardy); *Dretke v. Haley*, 541 U.S. 386 (2004) ("actual innocence" defense allows review of procedurally defaulted sufficiency challenge) (STATE's evidence insufficient to justify enhancement).

The Appeal Proper

Removal – Jurisdiction

3. Does the trial court have Removal jurisdiction?

a. Where's the federal question?

Caterpillar Inc. v. Williams, 482 U.S. 386 (1987); *Okla. Tax Comm'n v. Graham*, 489 U.S. 838 (1989). *RJF's* question ***is not***, "What does 'taxpayer' mean?" *RJF's* question ***is***, "Where's the agreement?"

b. Who's the *de facto* defendant?

Chicago, Rock Island & Pac. R.R. Co. v. Stude, 346 U.S. 574, 580 (1954) (alignment determined by fed law); *Gaar v. Quirk*, 86 F.3d 451 (5th Cir. 1996).

Removal – Procedure

4. What did doj actually Remove, if anything?

By ignoring the Proper Capacity "party", did doj remove the case in whole, in part, or at all?

5. Where's the evidence of signature authority?

He who claims agency must prove agency. *S. County Mut. Ins. Co. v. First Bank & Trust*, 750 S.W.2d 170 (Tex. 1988).

Dismissal – Immunity

6. Are these entities immune from this suit?

USOA/U.S. act as proprietors when they collect "taxes". 28 U.S.C. §§ 3002(3)(B), (15)(A).

Dismissal – Anti-Injunction Act

7. Where's the evidence that RJF is a "taxpayer"?

Cf. Hibbs v. Winn, 542 U.S. 88 (2004) (§ 1341—Anti-Injunction Act applies only against "taxpayers").

Notice of Orders

8. Does an ECF Notice suffice for Notice of an order to a non-ECF party?

RJF, as a non-attorney *pro se*, isn't even allowed to use the ECF system. So, where ECF parties get both the electronic Notice and a copy of the order, RJF got only a hard copy of an ECF Notice.

Temporary Injunction

9. Is RJF entitled to a temporary injunction enforcing the automatic administrative stay?

See irc § 6330(d)(1). [3] **"The"** "correct court" must include **"a" or "any"** state court with jurisdiction to address the petition.

Remedies and Relief Requested

Given the foregoing, RJF requests remedies and relief as follows:

1. Grant this petition and take jurisdiction of this matter;
2. Vacate the "order" of dismissal; strike all "orders" "signed" by the clerk, and, via remand, compel "the fifth" to address the merits of RJF's appeal;
3. Allow RJF to brief any additional issues the Court may identify;
4. The non-argument calendar;
5. Costs; and
6. Any and all other relief at law, in equity, or sui generis to which he may show himself justly entitled.

Respectfully submitted,

/s/ Richard John Florance, Jr.
Richard John Florance, Jr.

[3] Party alignment resolves this prospective Removal issue. Also, USOA/U.S. can't benefit from their wrongful conduct.

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2010 Mar 2—Clerical "order" of dismissal

United States Court of Appeals
Fifth Circuit
F I L E D
March 2, 2010

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10-10057

RICHARD JOHN FLORANCE, JR.,
Plaintiff - Appellant

v.

UNITED STATES OF AMERICA,
Defendant - Appellee

Appeal from the United States District Court for the Northern District of Texas, Dallas

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CLERK'S OFFICE:

Under 5th Cir. R.42.3, this case is dismissed as of March 2, 2010, for want of prosecution. The

appellant failed to timely comply with this court's notice of January 26, 2010.

Clerk of the United States Court
of Appeals for the Fifth Circuit

By: */s/ Renee McDonough*
Renee S. McDonough, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

2010 Mar 2—Mandate letter

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

March 02, 2010

Ms. Karen S. Mitchell
Northern District of Texas, Dallas
United States District Court
1100 Commerce Street
Earle Cabell Federal Building
Room 1452
Dallas, TX 75242

No. 10-10057, Richard Florance, Jr. v. USA
USDC No. 3:09-CV-1732

Enclosed is a copy of the judgment issued as the mandate.

CHARLES R. FULBRUGE III, Clerk

By: */s/ Renee McDonough*
Renee S. McDonough, Deputy Clerk
504-310-7673

cc: w/encl:
Mr. Richard John Florance Jr.
Mr. Joseph A Pitzinger III
Mr. Anthony T. Sheehan

Rule 14.1(i)(ii)—Additional Orders

Appellate court

No. 10-10057

2010 Jan 26—Clerical "show cause order" denying access

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

January 26, 2010

Mr. Richard John Florance Jr.
1908 Vassar Drive
Richardson, TX 75081-0000

No. 10-10057, Richard Florance, Jr. v. USA
USDC No. 3:09-CV-1732

Our records reflect that in case number 05-60552 and 07-40129 , Florance v. CIR and In Re: Florance, et al , the court sanctioned and barred you from filing any pro se appeals without the advance written permission of this court. You have thirty (30) days to submit a motion for permission to proceed as a sanctioned litigant. If you fail to comply we will dismiss this appeal without further notice. Forthcoming submissions other than a motion for permission to proceed will be neither addressed nor acknowledged.

CHARLES R. FULBRUGE III, Clerk

By: */s/ Renee McDonough*
Renee S. McDonough, Deputy Clerk
504-310-7673

cc:
Mr. Joseph A Pitzinger III

No. 07-40129

2007 Jun 5—"Order" striking/dismissing Mandamus, denying access

U.S. COURT OF APPEALS
F I L E D
JUN 0 5 2007
CHARLES R. FULBRUGE III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 07-40129
USDC No. 4:06-CV-178 &
USDC No. 4:06-CV-459

IN RE: AMANDA JEAN FLORANCE; RICHARD JOHN FLORANCE, JR.,

Petitioners.

- -

Petition for a Writ of Mandamus or Prohibition
to the United States District Court
for the Eastern District of Texas

- -

Before JOLLY, STEWART, and PRADO, Circuit Judges.

PER CURIAM:

Amanda Jean Florance and her father, Richard John Florance, Jr., have filed in this court a pro se petition for a writ of mandamus or prohibition. They state that the "real parties in interest" are Eastern District of Texas District Judge Richard A. Schell, Magistrate Judge Don D, Bush, and Clerk of Court David Maland.

The petitioners seek relief concerning two district court cases, 4:06-cv-178 and 4:06-cv-459. Both cases were removed from state courts to the federal court by one or both of the petitioners, and both have since been remanded. Petitioner Amanda Florance has appealed in 4:06-cv-178, and the case is in briefing stages. The district court docket sheet reflects that [⊥ 2] Richard Florance submitted an appellate filing fee in 4:09-cv-459, but our docket shows no indication of an appeal from that case.

The Florances' mandamus petition is replete with inappropriate, scurrilous, abusive, and contumacious language concerning Judges Schell and Bush and Clerk Maland. Among other relief, the petitioners seek "delay damages" from Judge Schell and request that Judges Schell and Bush and Clerk Maland be

censured or sanctioned. The first 23 pages of the petition are signed only by Amanda Florance, although Richard Florance's name is typed below her name. Amanda Florance has signed her name to an additional ten pages setting out "counts," as in a criminal indictment, directed at the activities of Judges Schell and Bush and Clerk Maland. Richard Florance signed his name to three more pages setting out an additional five "counts."

Although pro se litigants are entitled to liberal construction of their pleadings, we "will not allow liberal pleading rules and pro se practice to be a vehicle for abusive documents." Theriault v. Silber, 579 F.2d 302, 303 (5th Cir. 1978) (Theriault II). Any complaint the petitioners have about the conduct of Judges Schell and Bush and Clerk Maland could "be adequately addressed in a civil manner" in their pleadings. See id. Because of the insulting nature of the mandamus petition, we strike it. Cf. Theriault v. Silber, 574 F.2d 197, 197 (5th Cir. 1978) (Theriault I) (granting appellee's motion to strike notice [1 3] of appeal and dismiss appeal due to "disrespectful and impertinent references to the trial judge").

In Theriault I, our dismissal was without prejudice to the filing of a proper notice of appeal within ten days. 574 F.2d at 197. We decline to extend this option to Amanda and Richard Florance for two reasons: (1) on its merits, the mandamus petition would be denied; and (2) Richard Florance has already been sanctioned by this court.

Writs of mandamus or prohibition are rarely granted, and only when the right to relief is clear and indisputable. In re Estelle, 516 F.2d 480, 483 (5th

Cir. 1975). The writ is not available when a petitioner has other adequate means to obtain the requested relief. In re Montes, 677 F.2d 415, 416 (5th Cir. 1982).

The petitioners first request that we cancel a hearing in Judge Schell's court. That hearing, scheduled for two days after the mandamus petition was filed in this court, has been held. Any relief we might have granted relative to that hearing is moot.

The petitioners seek the disqualification of Judge Schell under 28 U.S.C. § 455(a). Such an argument may be raised on appeal from final judgment. Tramonte v. Chrysler Corp., 136 F.3d 1025, 1027-28 (5th Cir. 1998) (district court's remand orders may not be appealable if they concern procedural or jurisdictional defects, but challenge to district court's authority to issue [1 4] remand order, based on asserted disqualification under 28 U.S.C. § 455, is appealable). Thus, the Florances have an available remedy.

The petitioners also challenge "L.R. CV-11(g)" and its invocation by the district court. We have found no such local rule, but from their pleadings we infer that they mean the Eastern District's Appendix B, Local Rules of Court for the Assignment of Duties to United States Magistrate Judges, Rule 1(G). [1] Contrary to the Florances' assertions, this local rule does not compel non-prisoner pro se litigants to

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[1] "Non-Prisoner Pro Se Cases. All non-prisoner pro se cases are automatically referred to a magistrate judge for preliminary proceedings

The parties may consent to trial by the magistrate judge pursuant to 28 U.S.C. Section 636(c)."

consent to proceed before a magistrate judge; it sets out a procedure for nonconsensual referral under 28 U.S.C. § 636(b)(1)(A) and (B). Nor does the local rule single out non-prisoner pro se litigants for special treatment; other subsections of Appendix B, Rule 1, establish similar procedures for habeas corpus cases, prisoner civil cases, and some agency cases. The petitioners have shown no clear and indisputable right to relief on this ground. Further, any challenge to the magistrate judge's authority could also be raised on appeal. See Tramonte, 136 F.3d at 1028.

Because of the intemperate language that permeates the Florances' mandamus petition, we strike that pleading and dismiss [1 5] with prejudice the request for mandamus relief. We warn both Amanda and Richard Florance that any future pleadings they may file that contain inappropriate comments concerning judicial personnel or other parties will result in similar treatment. We have already sanctioned Richard Florance in another context. In Florance v. CIR, 174 F. App'x 200 (5th Cir. 2006), we declined to add monetary penalties to the $10,000 penalty already assessed by the United States Tax Court, but we ordered the clerk of our court "to refuse to accept for filing any further pleadings or other instruments received from Florance or on his behalf without first obtaining the authorization of a judge of this court." Florance, 174 F. App'x at 201, aff'g Florance v. CIR, 2005 WL 704809 (U.S. Tax Ct. Mar. 29, 2005). We clarify that that ban applies to all "pleadings or other instruments" from Richard Florance, not merely those connected with his Tax Court appeal.

PETITION STRICKEN; PETITION FOR WRIT OF MANDAMUS OR PROHIBITION DISMISSED WITH PREJUDICE; SANCTION WARNING ISSUED TO BOTH PETITIONERS; SANCTION AGAINST RICHARD JOHN FLORANCE, JR. IN FLORANCE V. CIR, 174 F. APP'X 200, 201 (5TH CIR. 2006), EXPANDED.

No. 05-60552

2006 Mar 29 – "Order" aff'g "tax court" and denying access

United States Court of Appeals
Fifth Circuit
F I L E D
March 29, 2006
Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-60552
Summary Calendar

RICHARD JOHN FLORANCE, JR.,
Petitioner-Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,
Defendant - Appellee

Appeal from United States Tax Court
(11782-03 and 18209-03)

Before KING, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM: *

Proceeding pro se, Petitioner-Appellant, Richard John Florance, Jr. appeals adverse rulings of the United States Tax Court. We note that, in addition to rulings against Florance on all substantive issues, the Tax Court imposed sanctions grounded primarily in the frivolousness of his cases and the actions he took in prosecuting them. Now, in addition to seeking our affirmance of the Tax Court in all respects, Defendant-Appellee Commissioner of Internal Revenue asks us to impose sanctions [⊥ 2] against Florance for bringing a frivolous appeal.

Based on our review of the record on appeal, including the rulings and reasoning of the Tax Court and its imposition of sanctions, the operative facts, and the appellate briefs of the parties, we too

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

conclude that the Tax Court correctly ruled in favor of the Commissioner on all substantive matters as well as sanctions, and that Florance's contentions there as here are wholly without merit.

Turning to sanctions for a frivolous appeal, the Commissioner has clearly made a case for their imposition, and Florance has filed to file a response or opposition thereto. Noting the sanctions already imposed by the Tax Court, and further noting that Florance is before us pro se, we decline to assess further monetary penalties. We do, however, order the Clerk of this Court to refuse to accept for filing any further pleadings or other instruments received from Florance or on his behalf without first obtaining the authorization of a judge of this court.

AFFIRMED; ORDER ISSUED PROHIBITING FURTHER FILINGS.

District court

2009 Dec 31—"Order" dismissing Removed case [14]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RICHARD JOHN FLORANCE, JR., Plaintiff,	§
v.	§
UNITED STATES OF AMERICA, Defendant.	§
	§ CIVIL ACTION NO. 3: 09-CV-1732-B

MEMORANDUM ORDER AND OPINION

Before the Court are Plaintiff Richard John Florance's Motion to Remand (doc. 4) and Defendant United States' Motion to Dismiss (doc. 8). For the reasons stated below, the Court **DENIES** Plaintiff's Motion to Remand and **GRANTS** Defendant's Motion to Dismiss.

I.

BACKGROUND

This case arises from a Notice of Deficiency mailed by the Internal Revenue Service ("IRS") to Plaintiff Richard John Florance, Jr. ("Florance") on May 26, 2009. The Notice of Deficiency informed Florance that he owed federal taxes for the taxable year 2006 in the amount of $ 110,469. In an apparent effort to challenge the Notice of Deficiency, on August 12, 2009, Florance initiated a civil action in the 192nd Judicial District of Dallas County, Texas against Defendant United States. The United States removed the action to this Court on September 17, 2009 pursuant to 28 U.S.C. §§ 1331 and 1340.

As best the Court can determine from Florance's rambling and somewhat fanciful [1 2] allegations, he appears to contends [sic] that the Notice of Deficiency issued by the IRS is legally unenforceable. (Pl.'s Original Pet. 12.) He argues that he owes no fiduciary duties to the United States and, as such, is not subject to federal income taxes. (*Id.*) Furthermore, Florance requests that the Court enjoin the United States from assessing taxes against him in the future. (*Id.*)

Florance filed a Motion to Remand on October 2, 2009 (doc. 4). On October 18, 2009 the United States filed their response and a Motion to Dismiss (doc. 8). Both motions being ripe, the Court now turns to the merits of its decision.

II.

MOTION TO REMAND

Because the jurisdiction of the federal courts is limited, a federal court must presume that a suit falls outside its jurisdiction. *See Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir. 2001). In an action which has been removed from state court, the removing party bears the burden of establishing that federal jurisdiction exists. *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1408 (5th Cir.), *cert. denied*, 516 U.S. 865 (1995) (citation omitted). Additionally, whether jurisdiction exists for a removed action is determined by looking at the complaint at the time the notice of removal is filed. *Brown v. Southwestern Bell Telephone Co.*, 901 F.2d 1250, 1254 (5th Cir. 1990).

The instant case concerns Florance's liability under federal income tax laws. Specifically, to resolve this case, the Court must determine whether Florance is a "taxpayer" as defined the Internal Revenue Code. Federal courts have original jurisdiction over civil actions arising under federal tax laws. *See* 28 U.S.C. § 1340. Therefore, this Court has original jurisdiction under 28 U.S.C. § 1340.

While Florance concedes that this case could have been brought in federal court under §1340, he contends that § 1340 does not provide adequate grounds for removal. (Pl.'s Mot. to [⊥ 3] Remand 5.) However, a state court action involving a question of federal law may be removed to federal court if the action could have originally been brought in federal court. *See* 28 U.S.C. § 1441(a). As discussed above, it is undisputed that this action could have originally

been brought in federal court. Thus, removal of this action to federal district court was proper under 28 U.S.C. § 1441(a). Accordingly, the Court **DENIES** Florance's Motion to Remand (doc. 4).

III.

MOTION TO DISMISS

The United States argues that this case should be dismissed for lack of subject matter jurisdiction under the doctrine of sovereign immunity. It is well, established that the United States, as a sovereign, may not be sued without its express consent. *United States v. Testan*, 424 U.S. 392, 399 (1976). "Where a suit has not been consented to by the United States, dismissal of the action is required." *Id.* A plaintiff filing a suit against the United States must state in his complaint the grounds upon which the sovereign consented to the suit. *See Swift v. U.S. Border Patrol*, 578 F.Supp. 35, 37 (S.D.Tex. 1983).

Florance does not allege in any of his pleadings that the United States has waived sovereign immunity with regard to this action. Rather, he states that those who assert the doctrine of sovereign immunity as a defense are "idiots," "professionally incompetent," or "clinically insane." (Pl.'s Reply 9.) Having found no grounds upon which the United States has consented to this suit, the Court finds that Florance's action must be dismissed for lack of subject matter jurisdiction. *See Broussard v. United States*, 989 F.2d 171, 177 (5th Cir. 1993) (finding that whenever the United States has not waived its sovereign immunity, the district court should dismiss the complaint for want of subject matter

jurisdiction). [⊥ 4]

IV.

CONCLUSION

For the reasons stated above, the Court **DENIES** Florance's Motion to Remand (doc. 4) and **GRANTS** Defendant United States' Motion to Dismiss (doc. 8). Accordingly, the Court **DISMISSES** this case without prejudice. Furthermore, Florance's Motion to Strike (doc. 5), First Motion to Strike (doc. 6), and Motion for a Temporary Injunction (doc. 10) are **DENIED as moot**.

SO ORDERED. DECEMBER 31, 2009.

/s/ Jane J. Boyle
JANE J. BOYLE
UNITED STATES DISTRICT JUDGE

Rule 14.1(i)(iii)—Rehearing, or other extension

None.

Rule 14.1(i)(iv)—Judgment of different date

None.

Rule 14.1(i)(v)—Statutes and Rules

None, here.

Rule 14.1(i)(vi)—Additional Materials

2009 Dec 31—Hard copy of ECF Notice served on RJF instead of the "order"

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Northern District of Texas

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Case Name: Florance v. United States of America
Case Number: 3:09-cv-1732
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Docket Text:
Memorandum Opinion and Order Denying as moot [10] Motion for Injunction filed by Richard John Florance, Jr, [5] Motion to Strike filed by Richard John Florance, Jr, [6] Motion to Strike filed by Richard John Florance, Jr, Grants [8] Motion to Dismiss filed by United States of America and Denying [4] Motion to Remand filed by Richard John Florance, Jr. Accordingly, the Court DISMISSES this case without prejudice. See Order (Ordered by Judge Jane J Boyle on 12/31/2009) (svc)
3:09-cv-1732 Notice has been electronically mailed to:
Joseph A Pitzinger joseph.a.pitzingerc4usdoj.gov,

lori.m.lloyd@usdoj.gov, southwestern.taxcivil@usdoj.gov

3:09-cv-1732 Notice will not be electronically mailed to:
Richard John Florance, Jr
1908 Vassar Drive
Richardson, TX 75081

The following document(s) are associated with this transaction:
Document description: Main Document
Original filename: n/a
Electronic document Stamp:
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